

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

FREEMAN DECORATING COMPANY;
GES EXPOSITION SERVICES, INC.;
ALLIED CONVENTION SERVICES, INC.
d/b/a ALLIED/BREDE EXPOSITION SERVICES;
SHEPARD EXPOSITION SERVICES, INC.

Employers¹

and

Case 12-RD-925

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, AND MOVING PICTURE
MACHINE TECHNICIANS, ARTISTS AND ALLIED
CRAFTS OF THE UNITED STATES AND CANADA,
AFL-CIO, AND LOCAL UNIONS 60, 115, 321, 412, 552,
558, AND 835

Union²

and

JAMES JOHN ZITIS

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

Freeman Decorating Company (Freeman), GES Exposition Services, Inc. (GES), Allied Convention Services, Inc. d/b/a Allied/Brede Exposition Services (Allied/Brede), and Shepard Exposition Services, Inc. (Shepard), collectively called the Employers, are general services contractors providing trade show and convention services in central Florida. The Petitioner, James John Zitis, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking a decertification election in a unit of trade show employees employed by the Employers. The Petitioner asserts that the Union, International Alliance of Theatrical Stage Employees, and Moving Picture Machine Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO, and Local Unions 60, 115, 321, 412,

¹ The names of the Employers appear as amended at the hearing.

² The name of the Union appears as amended at the hearing and in accordance with my findings below.

552, 558, and 835,³ currently recognized by the Employers, no longer represents the unit pursuant to Section 9(a) of the Act.

A hearing officer held a hearing in the instant case. In addition, the hearing officer took official notice of portions of the record developed in Case 12-RD-775, and the entire record developed in Case 12-RD-921. Following the hearing, briefs were filed by certain of the parties with me.⁴

At the hearing in the instant case, the Petitioner made a motion to intervene on behalf of International Union of Painters and Allied Trades, Local 1175, AFL-CIO, CLC (IPAT Local 1175), but the hearing officer denied the motion based upon the Petitioner's own admission that he is not an agent or representative of IPAT Local 1175. On October 29, 2002, the hearing officer adjourned the hearing until November 12, 2002, in part, because of the Petitioner's claim that employees sought representation by IPAT Local 1175. When the hearing resumed on November 12, 2002, IPAT Local 1175 appeared and made a motion to intervene based upon authorization cards transferred to it by the Petitioner. After the hearing closed, the Union filed a complaint with the AFL-CIO under Article XX of the AFL-CIO constitution regulating attempts by one AFL-CIO union to organize employees who have historically been represented by another AFL-CIO union. Pursuant to the procedures set forth in the Board's Casehandling Manual, Part Two--Representation Proceedings, Section 11018.1, regarding Article XX issues, I notified the proper parties regarding the filing of the decertification petition in an effort to allow the parties time to resolve the Article XX issue. On January 7, 2003, IPAT Local 1175 withdrew its motion to intervene. On February 2, 2003, the Petitioner filed a motion for a new hearing, or alternatively, to reopen the record. In his motion, the Petitioner asserts that the hearing officer erred by permitting the Union to invoke Article XX, thereby causing IPAT Local 1175 to withdraw its motion to intervene.

³ As explained further below, the Petitioner further contends that Local 631 is one of the labor organizations comprising the Union herein.

⁴ The Union and Employer Freeman filed briefs.

The Board's policy is to provide the parties with an opportunity to resolve Article XX disputes, but the Board does not make decisions regarding the applicability of Article XX. Moreover, it was IPAT Local 1175's decision to withdraw its motion to intervene. Accordingly, I find that the hearing officer's ruling on this issue is free from prejudicial error and affirmed, and the Petitioner's motion for a new hearing or to reopen the record is denied.

As evidenced at the hearing and in the briefs, the parties disagree on the following four major issues: (1) whether a multiemployer or single employer bargaining units are appropriate; (2) whether standby/emergency employees should be included in the unit; (3) whether the Board's Artcraft⁵ eligibility formula or Davison-Paxon⁶ eligibility formula should be applied; and (4) whether Local 631 should be included on the ballot of any directed election.

The Petitioner, Union, GES, Allied/Brede, and Shepard contend that a multiemployer bargaining unit exists, but Freeman contends there are single employer bargaining units. The Petitioner, Freeman, and GES argue that if the Board determines that a multiemployer bargaining unit exists, it consists of the four employers listed in the petition.⁷ The Union argues that the multiemployer unit should include the Employers, BH&L Decorators, Inc. (BH&L), Excel Decorators, Inc. (Excel), Champion Exposition Services, Inc., Expo Convention Contractors, Inc., Exhibit Services, Inc., Hargrove, Inc., Convention Services of the Southwest, Inc., and U-Neek Expo, Inc.

With the exception of the Petitioner, all of the parties agree that standby/emergency employees should be included in the unit. If standby/emergency employees are included in the unit, the Petitioner argues that the Davison-Paxon formula is appropriate to determine their eligibility to vote in the election, but all of the other parties contend that the Artcraft formula is appropriate. All of the parties, except for the Petitioner, would exclude Local 631 from the ballot. The parties agree that journeyman, helpers, and new hires should be included in the

⁵ Artcraft Displays, Inc., 262 NLRB 1233 (1982), as clarified, 263 NLRB 804 (1982).

⁶ Davison-Paxon Co., 185 NLRB 21 (1970).

⁷ Freeman took this position in its brief, but Freeman argued during the hearing that the multiemployer unit should also include BH&L Decorators, Inc. and Excel Decorators, Inc.

unit. While the record does not reveal the precise number of employees in the various alternate units discussed herein, there are at least 1,268 employees participating in Local 835's hiring hall who would potentially be eligible to vote in the election.

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I conclude that the petitioned-for multiemployer bargaining unit consisting of the four Employers is the appropriate, existing unit. I have also concluded that employees who averaged four hours of work per week during the first calendar quarter of 2003 are eligible to vote. Finally, I have determined that Local 631 should not be included on the ballot in the decertification election. Accordingly, I have directed an election in a unit that consists of as many as 1,268 employees or more. To provide a context for my discussion of the issues, I will first provide the relevant factual background in this case. Then, I will present in detail the facts and reasoning that support each of my conclusions on the issues.

I. RELEVANT FACTUAL BACKGROUND

The Employers perform about 90 percent of the convention work performed by general service contractors in central Florida. Since 1995, the Employers have participated as a group in collective-bargaining negotiations with the Union, and the Employers were parties to separate, but identical, collective-bargaining agreements with the Union that were effective, by their terms, from October 1, 1995, to June 30, 1999 (1995 agreement). Under the 1995 agreement, "the Union" included Local 60 (Panama City-Pensacola), Local 115 (Jacksonville-Tallahassee-Gainesville), Local 321 (Tampa), Local 412 (Sarasota), Local 552 (St. Petersburg), Local 558 (Daytona Beach), and Local 631 (Orlando-Cape Canaveral-Cocoa-Melbourne-Lake Buena Vista). In June 1998, Local 835 replaced Local 631 as the representative for the Orlando-Cape Canaveral-Cocoa-Melbourne-Lake Buena Vista area. At that time, Freeman and GES negotiated some minor changes to the grievance procedures set forth in the 1995 agreement. In 1999, the Employers once again participated in joint negotiations with the Union (including Local 835, but not Local 631) and the Employers entered into separate, but identical,

collective-bargaining agreements with the Union that are effective, by their terms, from July 1, 1999, to June 30, 2004 (1999 agreement).

The Employers, who are referred to as “general service contractors” in the 1995 and 1999 agreements, recognize the Union as the sole and exclusive collective-bargaining agent for journeyman, helpers, and new hires who perform the installation⁸ and dismantling work for trades shows and conventions. The agreements contain a “work referral system” provision, and the Union maintains a hiring hall in order to meet the Employers’ labor needs under the work referral system.

II. THE MULTIEMPLOYER BARGAINING UNIT

Before addressing the specific multiemployer issues presented in this case, I will briefly review the requirements for establishing a multiemployer bargaining unit. I will next further describe the joint collective-bargaining history of the Employers from 1995 to the present, and my conclusions with respect to the Employers. I will then address the collective-bargaining practices of BH&L, Excel, and the other employers that the Union contends are part of the multiemployer unit.

A. The Case Law

A multiemployer bargaining unit is created when there is a controlling history of bargaining on a multiemployer basis, and there is an “unequivocal intent” by the employer to participate in and be bound by the results of group bargaining. Sands Point Nursing Home, 319 NLRB 390 (1995); Hunts Point Recycling Corp., 301 NLRB 751, 752 (1991); Rock Springs Retail Merchants Association, 188 NLRB 261, 261-262 (1971). See also Central Transport, Inc., 328 NLRB 407, 408 (1999). The manifestation of an “unequivocal intention” to be bound will not depend on a formal association structure or formal delegation of authority from an individual employer to the multiemployer group. Jaflo, Inc., 327 NLRB 88, 90 (1998); Custom

⁸ The installation work includes marking floors, laying carpet, setting pipe and drape, opening boxes, and setting up exhibits.

Colors Contractors, 226 NLRB 851, 852-853 (1976), enfd, NLRB v. Beckman, Inc., 564 F.2d 190 (5th Cir. 1977); The Kroger Co., 148 NLRB 569, 573 (1964); Detroit News, 119 NLRB 345, 347-348 (1958).

Absent an express delegation of authority from an individual employer to the multiemployer group, the requisite intention to be bound can be inferred from the conduct of the parties. Jaflo, Inc., 327 NLRB at 90; American Publishing Co., 121 NLRB 115, 121-122 (1958). The Board has found that employers that participate in meaningful multiemployer bargaining for a substantial period of time, and employers that uniformly adopt an agreement resulting from joint bargaining have manifested their intent to be bound. McAx Sign Company, Inc., 231 NLRB 957, 958 (1977), enfd, 576 F.2d 62 (5th Cir. 1977); Krist Gradis, 121 NLRB 601, 609-610 (1958). As such, private manifestations of dissent will not be controlling if an employer's course of conduct signifies that it has authorized the group to act on its behalf. Custom Colors, supra, at 853.

The Board also recognizes that since each member of the multiemployer group does not always have identical concerns, limited adjustments to a multiemployer contract reached through individual negotiations are not inconsistent with an intent to be bound by multiemployer bargaining. Sands Point Nursing Home, 319 NLRB 390; The Kroger Co., 148 NLRB at 573. Moreover, the signing of individual collective-bargaining agreements by employers does not preclude the existence of a multiemployer unit. Belleville Employing Printers, 122 NLRB 350, 353 (1959); Krist Gradis, 121 NLRB at 610.

B. The Multiemployer Negotiations

1. 1995

In 1995, the Employers participated in collective-bargaining negotiations with the Union. Freeman,⁹ which had individually negotiated agreements with the Union in the past, had a

⁹ In 1981, Freeman purchased GES's east coast operations, and Freeman adopted GES' existing collective-bargaining bargaining agreement with Local 631.

collective-bargaining agreement set to expire in September 1995, and the other three Employers joined Freeman for negotiations. The negotiations took place at the Adams Mark Hotel in Orlando, Florida. Brian Lawler, Local 631; Keith Klemmt, Local 115; and Paul Paleveda, Local 321, represented the Union. Although each of the Employers had a representative at the bargaining table, Tom McGarvey, senior director of labor relations for GES, evolved into the spokesperson for the Employers. Prior to the negotiations with the Union, the Employers discussed their bargaining strategies and developed bargaining proposals. During the negotiations, if disagreements arose among the Employers or with the Union, the Employers left the room to caucus, and returned with unified counterproposals to present to the Union. Immediately after the conclusion of the negotiations, the parties executed separate, but identical, collective-bargaining agreements. Subsequently, Local 631 prepared and distributed a booklet to the employees containing the agreement.

2. 1999

In May 1999, the Employers once again participated in group negotiations with the Union for a successor collective-bargaining agreement. In addition to the Employers, BH&L, Excel, and Echo Expo, Inc. participated in some of the negotiation sessions. Prior to several of the bargaining sessions with the Union, some of the contractors¹⁰ met at GES' offices in Orlando, Florida to develop bargaining strategies and proposals. At one of these meetings, a consensus was reached that senior labor relations director McGarvey from GES would again be the spokesperson for the negotiations, and the Employers assured McGarvey that they intended to bargain with the Union as a group. During these meetings, Freeman and GES, as the largest contractors, developed proposals, and those were modified based upon input from the other contractors. Ultimately, McGarvey prepared a written proposal from the Employers, and he submitted the proposal to the Union on May 22, 1999.

¹⁰ BH&L and Excel participated in some of these meetings.

The collective-bargaining sessions were held on May 22, June 2-3, June 14-15, and June 30 at GES' offices in Orlando, Florida. The Union's spokesperson was Dick Varani, international representative. In addition, Susan Wolfgang, co-trustee Local 835; Carl Booth, Local 835; Denise Francavilla, Local 835; Mark, whose last name is unknown, Local 835; Keith Klemmt, Local 115; and Paul Paleveda, Local 321, were present for the Union.

As stated above, McGarvey was the spokesperson for the Employers at all of the bargaining sessions. Jan Adams, operations manager; Mark Adams, manager; and Al Dyess, manager, were also present for GES. Mike Sole, regional vice-president; Mike Sterling, R&D supervisor; Rob Engelhardt, assistant regional vice-president; and Bill Perun, director of operations, were present for Freeman. John Mills, general manager and Tom Cline, show floor supervisor, were present for Allied/Brede, and Pat McAvoy, director of operations, was present for Shepard. The Employers and the Union were represented at all times, but some representatives were not present for all of the negotiations.

In addition, representatives from BH&L, Excel, and Echo Expo, Inc., the smaller contractors, were present at some of the negotiation sessions. Bob Salser, vice-president for BH&L, was present at the May 22nd, June 3rd, and June 30th bargaining sessions. John Green, director of operations for Excel, was present at the May 22nd and June 30th meetings. Chris Healey, for Echo Expo, Inc.,¹¹ was present only at the May 22nd bargaining session.

At the May 22nd bargaining session, the Union gave the Employers a written copy of a draft collective-bargaining agreement that contained the Union's proposals. Varani then orally reviewed the draft agreement paragraph by paragraph with the Employers to address any issues raised. During the June 2nd or 3rd bargaining session, Varani obtained assurances from the Employers that that they intended to abide by a "final settlement" if they reached an agreement with the Union, but there is some conflicting evidence regarding whether some of the Employers reserved the right to accept or reject any agreement reached. Although all of the

¹¹ None of the parties claim that Echo Expo, Inc. should be included in the multiemployer bargaining unit.

representatives present for the Employers spoke at the meetings and had certain individual concerns,¹² the Employers generally took the same position on the issues.

McGarvey articulated a single bargaining position on the issues for the Employers, and none of the Employers made separate bargaining proposals to the Union. Moreover, none of the Employers expressed dissent from the positions being taken at the bargaining table. Whenever there was any disagreement among the Employers or with the Union, the Employers left the room; caucused in order to evaluate and/or modify their positions; reached a consensus; and returned with a unified position to present to the Union. For example, although the Employers were initially divided over wages, McGarvey ultimately presented a joint wage proposal to the Union, and the Union accepted the proposal. Varani, who brought a lap-top computer to the negotiations, updated the draft agreement on a regular basis to reflect the agreed-upon changes. At the beginning of each bargaining session, Varani gave the Employers a copy of the updated agreement with all changes italicized or highlighted.

By the end of the June 30th bargaining session, the parties had reached a final agreement, but they did not have a clean and final copy of the document. In order to acknowledge the parties' agreement, McGarvey hand-wrote "Memorandum of Understanding between the Signatory Contractors (as per signature sheet) and IATSE and IATSE Local 835" (MOU). The MOU was signed by McGarvey for GES, Rob Englehardt for Freeman, Tom Cline for Allied/Brede, and Pat McAvoy for Shepard. Varani signed the MOU for the Union. Varani told the Employers that ratification of the agreement was not necessary.¹³ Immediately after the conclusion of the June 30th negotiation session, Freeman and GES entered into side agreements with some of the local unions.¹⁴

On July 1, 1999, the Employers and the Union met again at GES's offices and prepared clean copies of the collective-bargaining agreement. In addition, sometime after July 1, 2000,

¹² GES desired a 100 percent call by name system, and Freeman and GES desired an increased number of employees on the priority call list. Neither of these provisions was incorporated in the collective-bargaining agreement.

¹³ Varani apparently stated he would review the MOU with the International Union as a formality.

Varani and McGarvey resolved, by telephone, an issue involving a “quick call back” by employees, and the provision was ultimately included in the final agreement signed by the Employers.¹⁵ Ultimately, the collective-bargaining agreement was individually signed by the Employers on August 6-7, 1999.

The 1999 agreement, like the 1995 agreement, sets forth a Labor Management Committee (LMC) and a Joint Classification and Training Committee (JCTC). The LMC is comprised of an equal number of representatives of the Employers and Union that meet every calendar quarter to deal primarily with grievances. An operations manager from each of the Employers generally participates, and rarely do the Employers disagree on grievance issues. The JCTC is comprised of an equal number of representatives of the Employers and Union that meet on a regular basis to qualify employees for the Union’s referral lists. Additionally, the Employers contribute to a training trust fund and the Union’s National Health and Welfare Fund, as set forth in the agreement.

C. Multiemployer Unit Consisting of Freeman, GES, Allied/Brede and Shepard

I find that the petitioned-for multiemployer bargaining unit consisting of Freeman, GES, Allied/Brede and Shepard is the appropriate, existing unit. The Employers have demonstrated an unequivocal intent to be bound by joint action, and there is a controlling history of multiemployer bargaining.

During the 1999 negotiations, the Employers assured their spokesperson that they would bargain with the Union as a group, and participated in joint bargaining. At the outset of the negotiations, the Employers told the Union that they intended to be bound by a collective-bargaining agreement if an agreement was reached. See Custom Colors Contractors, 226 NLRB 851, 852 (1976). Assuming arguendo that some of the Employers told the Union they would independently review any agreement reached prior to its execution, in practice none of

¹⁴ Freeman’s side agreements are with the Tampa and Jacksonville locals concerning forklift operations and employee rest periods.

¹⁵ On July 5, 1999, McGarvey sent Varani a letter stating that, as chief negotiator, it was his understanding that all of the Employers had ratified the agreement which included the negotiated “quick call back” issue.

the Employers rejected the agreement. Bill O'Grady Carpet Service, Inc., 185 NLRB 587, 590 (1970); Quality Limestone Products, Inc., 143 NLRB 589, 590 (1963).

Moreover, the Employers' bargaining practices in 1995 and 1999 reflect their unequivocal intent to be bound as a group. The Employers developed bargaining strategies before the negotiations; caucused to jointly formulate single counterproposals; and maintained one spokesperson. None of the Employers made separate bargaining proposals to the Union or dissented from the positions taken by their spokesperson at the bargaining table. At the conclusion of the joint negotiations, separate, but identical, collective-bargaining agreements were executed by the Employers and the Union. The Board has found that such meaningful joint bargaining over a substantial period of time, and adoption of uniform contracts resulting from the joint bargaining results in a multiemployer bargaining unit. Bel Window, 240 NLRB 1315 (1979), enforcement denied on other grounds, H&D, Inc. v. NLRB, 665 F.2d 257 (9th Cir. 1980); The Kroger Co., 148 NLRB 569, 571-573 (1964), American Publishing Corp., 121 NLRB 115, 121-122 (1958).

The signing by the Employers of individual uniform contracts does not negate the existence of a multiemployer unit. Belleville Employing Printers, 122 NLRB 350 (1959); Krist Gradis, 121 NLRB 601 (1958). Moreover, it is immaterial that each of the Employers signed the MOU and resulting agreements separately rather than delegating authority to McGarvey, their chief spokesperson. Custom Colors, supra, at 854; American Publishing Corp., 121 NLRB at 121; Detroit News, 119 NLRB 345, 348 (1958).

Moreover, the Employers' practice of joint bargaining since 1995 reflects a controlling history of multiemployer bargaining. Bel-Window, 240 NLRB at 1315; Milwaukee Meat Packers Assn., 223 NLRB 922, 924 (1976). Although Freeman negotiated individually with the Union prior to 1995, its practice of joint bargaining since 1995 outweighs its earlier history of bargaining on an individual basis. Central Transport, 328 NLRB 407, 409 (1999). In addition, Freeman's and GES's separate negotiations with the Union regarding the grievance procedure in 1998 and amendments to the 1999 agreement do not negate the existence of a

multiemployer bargaining unit. The Board recognizes that members of a multiemployer group do not always have identical problems, and individual employer members are not precluded from negotiating separately on limited matters. The Kroger Co., 148 NLRB 569, 573 (1964); Evans Pipe Co., 121 NLRB 15, 17 (1958). Notably, notwithstanding the modifications to the grievance procedure in 1998, the Employers have a history of jointly administering the grievance procedure through the LMC, which reflects their commitment to the multiemployer unit. Detroit News, 119 NLRB at 348; American Publishing, 121 NLRB at 120.

D. The Other Employers

1. BH&L Decorators, Inc. is Not Part of the Multiemployer Unit

I find that BH&L's employees are not included in the multiemployer unit because BH&L does not have a controlling history of multiemployer bargaining nor did it manifest an unequivocal intent to be bound by group action.

In or about 1987, BH&L began entering into single show agreements with Local 631. In 1989 or 1990, BH&L entered into a collective-bargaining agreement with Local 115, and that agreement was utilized with other locals when BH&L performed work in a particular local's jurisdiction. In 1995, the Union re-negotiated a collective-bargaining agreement with Bob Salser, owner of BH&L, at BH&L's offices, and none of the Employers were present. This was the first time that BH&L entered into an agreement with the Union that included all of the locals in the central Florida area, and the agreement was effective, by its terms, from October 1, 1995 to June 20, 1999. The 1995 BH&L agreement had different fringe benefit and hiring hall provisions than the Employers' 1995 agreement. Moreover, BH&L's agreement included freight handling and forklift operations, which are excluded from the Employers' 1995 agreement. BH&L did, however, occasionally participate in the LMC and JCTC meetings held by the Employers.

With respect to the 1999 negotiations, Salser was present at the May 22nd, June 3rd, and part of the June 30th bargaining sessions. Early on in the negotiations, Salser expressed substantial differences with the Employers. On June 30th, Salser was not present when the

MOU was executed by the Employers and the Union. Salser did not enter into the collective-bargaining agreement because of its work referral procedures and its five-year term.

Notwithstanding BH&L's failure to execute the MOU, the Union agreed that BH&L would continue to abide by its 1995 agreement until a successor agreement was negotiated. The record does not reflect that BH&L has entered into a successor collective-bargaining agreement with the Union.

On September 12, 2002, Local 835 filed an unfair labor practice charge against BH&L alleging that since on or about July 15, 2002, BH&L had refused to sign a collective-bargaining agreement. On October 31, 2002, after a thorough investigation, I dismissed the charge stating, in part, that the parties had met and bargained on sporadic occasions between 1999 and early 2002, and that the parties failed to reach a meeting of the minds on a collective-bargaining agreement.

In sharp contrast to the Employers, BH&L negotiated with the Union on an individual basis in 1995, and the resulting agreement is different from the Employers' 1995 agreement. Ruan Transport Corp., 234 NLRB 241, 243 (1978). In 1999, BH&L participated in some bargaining sessions; expressed substantial disagreements during the negotiations; and refused to sign the MOU or resulting collective-bargaining agreement. BH&L's conduct evidences an intent to participate in the group negotiations out of convenience rather than an intent to participate in the multiemployer unit. Ruan Transport, 234 NLRB at 242; Rock Springs Retail Merchants Ass'n, 188 NLRB 261, 262 (1971); Santa Barbara Distributing Co., 172 NLRB 1665 (1968). BH&L's failure to execute the MOU or resulting collective bargaining agreement also negates any inference of an intent to be bound. Rock Springs, 188 NLRB at 262. Moreover, the Union's agreement to allow BH&L to operate under the 1995 agreement pending further negotiations negates any inference that BH&L unequivocally intended to be part of the multiemployer unit. Accetta Millwork, Inc., 274 NLRB 141, 142 (1985); Van Eerden Co., 154 NLRB 496, 501 (1965). Additionally, BH&L's occasional participation with the Employers in the

LMC or JCTC, both controlled by the Employers, is insufficient to include BH&L in the multiemployer unit. Averill Plumbing & Heating Corp., 153 NLRB 1595 (1965).

2. Excel Decorators, Inc. is Not Part of the Multiemployer Unit

For similar reasons, I find that Excel should be excluded from the multiemployer unit.

Excel and the Union entered into a collective-bargaining agreement effective, by its terms, from October 16, 1995 to June 30, 1999. Although Excel's agreement was substantially similar to the Employers' 1995 agreement, Excel did not participate in the 1995 joint negotiations. With respect to the 1999 multiemployer negotiations, Excel participated in some of the bargaining sessions; expressed substantial differences with the Employers; and did not sign the MOU or collective-bargaining agreement.

On October 12, 2000, Excel entered into a collective-bargaining agreement with the Union that is effective, by its terms, from July 1, 2000, to June 30, 2003, and contains different benefits and wage rates than the Employers' 1999 agreement. Excel's lack of meaningful joint bargaining over a substantial period of time and failure to execute a uniform contract resulting from the 1999 joint bargaining preclude a finding that Excel should be included in the multiemployer bargaining unit. Ruan Transport Corp., 234 NLRB at 243; Rock Springs, 188 NLRB at 262; Santa Barbara Distributing Co., 172 NLRB at 1665.

3. Champion Exposition Services, Inc., Expo Convention Contractors, Inc., Exhibit Services, Inc., Hargrove, Inc., Convention Services of the Southwest, Inc., and U-Neek Expo, Inc. are Not in the Multiemployer Unit

I find that the employees of Champion Exposition Services, Inc., Expo Convention Contractors, Inc., Exhibit Services, Inc., Hargrove, Inc., Convention Services of the Southwest,

Inc. and U-Neek Expo, Inc. are not part of the multiemployer unit.¹⁶ None of these companies have a controlling history of joint bargaining with the Union nor have they manifested an unequivocal intent to be bound by the multiemployer bargaining, as further described below:

- a. Prior to 1999, Champion Exposition Services, Inc. subcontracted its Orlando, Florida work to Allied/Brede and did not employ any labor. In December 2001, Champion and the Union participated in negotiations that resulted in a collective bargaining agreement covering decorating and freight. The agreement is effective, by its terms, from January 1, 2002, to December 31, 2004;
- b. Expo Convention Contractors, Inc. had a collective-bargaining agreement with Local 631 from 1995 to 1999, and Expo has a current agreement with the Union that is effective, by its terms, from July 1, 2000, to June 30, 2003;
- c. Exhibit Services, Inc. has a current collective-bargaining agreement with the Union that is effective, by its terms, from July 1, 2000 to June 30, 2003;
- d. Hargrove, Inc. has a current collective-bargaining agreement with the Union that is effective, by its terms, from July 1, 2000 to June 30, 2003;
- e. Convention Services of the Southwest, Inc. and the Union have a collective-bargaining agreement that is effective, by its terms, from January 1, 2002, to December 31, 2004; and
- f. U-Neek Expo, Inc. and the Union have a collective-bargaining agreement that is effective, by its terms, from July 1, 2000, to June 30, 2003.

None of the contractors listed above participated in the 1995 or 1999 negotiations with the Employers. These companies negotiated agreements on an individual basis with the Union and did not authorize an agent from the multiemployer group to bargain on their behalf. Etna Equipment & Supply Co., 236 NLRB 1578 (1978); Photographers of the Motion Picture Industries, 197 NLRB 1187, 1189 (1972); Moveable Partitions, Inc., 175 NLRB 915, 916 (1969).

¹⁶ Based upon this finding, it is not necessary for me to reach the Union's contention that a contract bar exists regarding some of these contractors.

Although the contractors signed agreements that are substantially similar to the Employers' 1999 agreement, this is insufficient to confer multiemployer status. Ruan Transport Corp., 234 NLRB 241, 242 (1978); Texas Cartage Co., 122 NLRB 999, 1000 (1959). Similarly, the fact that the contractors are in the same industry and share a similar workforce as the Employers is insufficient to conclude that their employees are members of the multiemployer unit given the absence of a controlling history of joint bargaining or the expression of an unequivocal intent to be bound by joint action.

III. STANDBY/EMERGENCY EMPLOYEES

I find that standby/emergency employees are part of the multiemployer bargaining unit, as described further below.

A. The Hiring Hall

The 1995 and 1999 agreements set forth a "work referral system", and the Union maintains various referral lists to meet the Employers' labor needs. Under the 1999 agreement, the Union shall maintain three referral lists: (a) journeymen, who must have a minimum of 1,000 hours in the industry; (b) helpers, who must have a minimum of 500 hours in the industry; and (c) new hires, who have no minimum hour requirement but must be 18 years old and attend an orientation seminar.

Local 835 breaks down the classifications further into Journeymen A, B, and C, helpers, new hires, and standby/emergency employees, but these additional classifications are not inconsistent with the language in the 1999 agreement, and the Employers have approved these classifications. Journeymen A must have 750 hours of work for two consecutive years followed by 1,000 hours of work for three consecutive years. Journeymen B must have 750 hours of work for two consecutive years. Journeymen C must have at least 1,000 hours in the industry, training, and pass a journeyman's test. There is also a list of helpers, who must have at least 500 hours in the industry, and a list of new hires, who must have at least 250 hours in the industry.

Under the Employers' 1999 collective-bargaining agreement, if the Union refers an employee to a job and the employee appears at the jobsite, the Employer must pay the employee for a minimum of four hours of work.

B. Standby/Emergency Employees Included in the Unit

Local 835 also maintains a standby list,¹⁷ also called the emergency list. The record reflects that standby/emergency employees are additionally sometimes called casual day labor.

The standby/emergency list is composed of all individuals who come to the Union for the first time and have less than 250 hours in the industry. Once standby/emergency employees have reached 250 hours, a process that varies in length of time for each individual depending on the work available, they are automatically placed on the new hire list. When the standby/emergency list employees approach the 250 hour mark, they are encouraged to attend a training seminar and obtain a task manual to help them progress up to the next list. If an individual comes to Local 835 with more than 250 hours in the industry and has proof of that work, they are placed on the new hire or appropriate journeyman list, but they would be placed at the end of that particular list. All of the other lists are exhausted before employees from the standby/emergency list are called for jobs, and standby/emergency employees are the first employees to be released from a particular job.

Standby/emergency employees are sent out to the same jobs as new hires, perform the same type of work, and are subject to the same working conditions. Standby/emergency employees work side-by-side with journeyman, helpers, and new hires and are supervised by the same individuals on the show sites. Moreover, standby/emergency employees receive the same wages and benefits as new hires and are entitled to file grievances. Accordingly, I find that standby/emergency employees are included in the unit.

IV. ELIGIBILITY FORMULA

¹⁷ It appears that Local 835 is the only local union that uses a standby list.

The adoption of a specialized eligibility formula is appropriate for elections involving a unit of employees whose employment relationship with a particular employer fluctuates throughout the year. In the present case, I find that employees are eligible to vote if they meet an eligibility formula like that articulated by the Board in Davison-Paxon Co., 185 NLRB 21, 23-24 (1970), as measured in the first calendar quarter of 2003, rather than the two alternative eligibility formulas set forth in Artcraft Displays, Inc., 262 NLRB 1233, 1237 (1982), as clarified, 263 NLRB 804, 805 (1982).

The Board has found that part-time, on-call employees are eligible to vote in an election if they work an average of four hours or more per week during the last quarter prior to the eligibility date. See Trump Taj Mahal Associates, 306 NLRB 294, 296 (1992); Davison-Paxon Co., 185 NLRB 21, 23-24 (1970). For ease of applicability, and because the first calendar quarter is the busiest, I shall measure eligibility in the present case using the first full calendar quarter of 2003.¹⁸ All employees who averaged four or more hours of work per week (that is, those who worked a total of 52 hours or more during that period) are eligible voters.

In Artcraft Displays, Inc., 262 NLRB 1233, 1237 (1982), as clarified, 263 NLRB 804, 805 (1982), the Board, taking into account the seasonal nature of the convention and trade show industry, decided that part-time employees were eligible to vote if they had worked 15 days within the busiest calendar quarter preceding the eligibility date. The Board reasoned that the greatest number of employees would be employed during that period, and that the employees who had worked during that period of time had a “substantial and continuing interest” in the unit. Artcraft, 262 NLRB at 1237. This eligibility formula set forth in Artcraft is a reasonable one. However, the Davison-Paxon eligibility formula is likely to enfranchise a few more voters than this first of the two Artcraft formulas alone, and, in any event, in the present case, it further appears that the Davison-Paxon formula, applied in the first quarter of 2003, would encompass

¹⁸ I note, also, that the first calendar quarter of 2003, and the 13 weeks prior to the eligibility date, are virtually identical in the present case. (The collective bargaining agreement provides for weekly pay periods.)

all employees who worked 15 days during the busiest calendar quarter prior to the eligibility date.¹⁹

Moreover, I find that the alternative eligibility formula set forth by the Board in Artcraft Displays, Inc., 263 NLRB 804, 805 (1982), is unworkable in the present case. In Artcraft, 263 NLRB at 805, the Board found that part-time employees with over 1,000 hours of seniority who were then currently working, or available for work, and who appeared on the union's seniority list in the calendar quarter immediately preceding the eligibility date, were also eligible to vote in the election. Contrary to the facts in Artcraft, which involved a single union, this case involves multiple local unions, and the manner in which each local union administers its hiring hall lists may differ. As such, using the 1,000-hour seniority list standard presents logistical problems in obtaining appropriate seniority lists from each local union in order to determine voter eligibility. Accordingly, this formula is likely to make it impossible to readily determine who is eligible to vote.

V. LOCAL 631 EXCLUDED FROM THE BALLOT

I find that Local 631 should be excluded from participation in the election because Local 835 replaced Local 631; Local 631 did not participate in the 1999 multiemployer negotiations; Local 631 is not a party to the 1999 agreement; and Local 631's occasional referrals of employees for unit work do not warrant the conclusion that it retains its representational status with respect to the unit.

In June 1998, Local 835 was created to meet the needs of the convention industry, and Local 835 replaced Local 631 as the collective-bargaining representative for the trade show employees in the Orlando-Cape Canaveral-Cocoa-Melbourne-Lake Buena Vista area. At that time, GES, Freeman and Shepard, signed identical but separate Memoranda of Agreement stating that Local 835 was replacing Local 631 as the collective-bargaining representative for that area. At that time, Freeman and GES negotiated a few changes to the grievance procedure provisions in the 1995 agreement. In addition, on March 13, 1998, the Union sent

¹⁹ See the reference to the four hour rule described above in the section on standby employees.

identical letters to John Mills of Allied/Brede and Bob Salser of BH&L explaining the proposed change from Local 631 to Local 835, and asking the contractors to sign and return the letters to the Union if they accepted the change. Both Allied/Brede and BH&L executed the letters.

Thus, Local 835, not Local 631, participated in the 1999 multiemployer negotiations and entered into the 1999 agreement with the Employers. The record reflects that Local 631 occasionally refers employees to perform unit work covered by the 1999 agreement, but these referrals are generally made pursuant to “run-of-the-show” agreements lasting only for a particular production. In those cases, when Local 835 has exhausted its hiring hall lists, Local 631 has referred employees to those jobs. To the extent that Local 631 may occasionally provide labor to the Employers for unit work, this takes place pursuant to separate run-of-the-show agreements or under circumstances that are insufficient to warrant its inclusion on the ballot. Accordingly, I find that Local 631 should be excluded from participation in the decertification election.

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

A. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.

B. The Employers are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.²⁰

C. The Petitioner seeks a decertification election of the Union.²¹

²⁰ At the hearing, the parties stipulated that during the previous 12 months, Freeman Decorating Company (an Iowa corporation), GES Exposition Services, Inc. (a Nevada corporation), Shepard Exposition Services, Inc. (a Georgia corporation), and Allied Convention Services, Inc. d/b/a Allied/Brede Exposition Services (a Delaware corporation), general service contractors with principal offices and places of business in Orlando, Florida, were engaged in providing trade show and convention services. During those twelve (12) months, the Employers, in conducting their business operations, purchased and caused to be transported and delivered to jobsites in the State of Florida, goods valued in excess of \$50,000 directly from points outside the State of Florida.

²¹ At the hearing, the parties stipulated that the Union is a labor organization within the meaning of Section 2(5) of the Act.

D. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

E. The following employees of the Employers constitute a unit that is coextensive with the recognized unit, and the unit is appropriate within the meaning of Section 9(b) of the Act:

All full-time and regular part-time²² journeymen, helpers, and new hires, including “standby/emergency” employees, performing installation and dismantling trade show and convention work employed by Freeman Decorating Company, GES Exposition Services, Inc., Allied Convention Services, Inc. d/b/a Allied/Brede Exposition Services, and Shepard Exposition Services, Inc., within the geographic jurisdictions in Florida of the International Alliance of Theatrical Stage Employees, and Moving Picture Machine Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO, Local Unions 60 (Panama City-Pensacola), 115 (Jacksonville-Tallahassee-Gainesville), 321 (Tampa), 412 (Sarasota), 552 (St. Petersburg), 558 (Daytona Beach), and 835 (Orlando-Cape Canaveral-Cocoa-Melbourne-Lake Buena Vista), EXCLUDING freight and all other employees, guards and supervisors as defined in the Act.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective-bargaining by International Alliance of Theatrical Stage Employees, and Moving Picture Machine Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO, and Local Unions 60, 115, 321, 412, 552, 558, and 835. The date, time, and place of the election will be specified in the Notice of Election that the Board’s Regional Office will issue subsequent to this Decision.

A. Voter Eligibility

Eligible to vote in the election are those full-time employees in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Additionally eligible are those employees in the unit who averaged four or

²² The record does not reflect whether or not any full-time employees are employed. Part-time employees who meet

more hours of work per week during the first quarter of 2003. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employers to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employers must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 358, 361 (1994).²³ This list must be of sufficiently large type to be clearly legible. To speed

the eligibility formula set forth below in the Direction of Election are also eligible to vote.

²³ The Employers should submit a single, combined list.

both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 E. Kennedy Blvd., Suite 530, Tampa, FL 33602-5824, on or before April 17th, 2003. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirements to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (813) 228-2874. Since the list will be made available to all parties to the election, please furnish a total of **13** copies, unless the list is submitted by facsimile, in which case only one need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employers must post the Notices to Election provided by the Board in areas conspicuous to potential voters for minimum of 3 full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to the 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). An employer who fails to do so may not file objections based on nonposting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, Washington, D.C. 20570-0001. This request must

be received by the Board in Washington by 5:00 p.m., EST on April 24, 2003. The request may not be filed by facsimile.

DATED at Tampa, Florida, this 10th day of April, 2003.

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824

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